Supreme Court, U.S.
FILED
DEC 18 1970
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~958~~ 70-38

FEDERAL POWER COMMISSION,

Petitioner,

v.

FLORIDA POWER & LIGHT COMPANY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OBJECTION OF RESPONDENT TO MOTION OF AMERICAN PUBLIC POWER ASSOCIATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

LEON JAWORSKI
JEFFERSON D. GILLER
FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI
800 Bank of the Southwest Building
Houston, Texas 77002

HARRY A. POTH, JR.
RICHARD M. MERRIMAN
REID & PRIEST
1701 "K" Street, N. W.
Washington, D. C. 20006

Attorneys for Respondent

December, 1970

FIDELITY PRINTING COMPANY, INC., HOUSTON

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 958

FEDERAL POWER COMMISSION,

Petitioner,

v.

FLORIDA POWER & LIGHT COMPANY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OBJECTION OF RESPONDENT TO MOTION OF AMERICAN PUBLIC POWER ASSOCIATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Respondent, Florida Power & Light Company, objects to the motion of American Public Power Association ("APPA") seeking leave to file its amicus curiae brief because (a) the issues in this case have been fairly drawn in the Petition and the Brief in Opposition thereto, and therefore the legal argument made by APPA on those issues is superfluous; and (b) more importantly, the proposed brief of APPA contains a significant misstatement as to the issues involved.

That misstatement arises as follows: Section 201(b) of the Act (16 U.S.C. § 824(b)) exempts local distribution facilities from Commission jurisdiction whether or not interstate electricity moves through those distribution facilities. The majority of the Commission held that Respon-

dent's facilities were not within this exemption. APPA states that the Court of Appeals for the Fifth Circuit overruled the Commission on this point and that the lower court's action in so doing presents a separate error and question for this Court to review. (APPA Brief, pp. 7, 12).

It is simply not true that the court below overruled the Commission on this point. The court below did not even pass on it. Respondent did not argue this point in its brief to the court below, and the Commission specifically noted in its brief below that this exemption was not an issue (Commission Brief, p. 8, fn. 9). Neither the Solicitor General nor the Respondent argued in the Petition and the Brief in Opposition to this Court the applicability vel non of this exemption.

For the foregoing reasons, Respondent prays that the motion of APPA for leave to file its amicus curiae brief be denied.

Respectfully submitted,

Original Signed By
Leon Jaworski

LEON JAWORSKI
JEFFERSON D. GILLER
FULBRIGHT, CROOKER, FREEMAN,
BATES & JAWORSKI
800 Bank of the Southwest
Building
Houston, Texas 77002

HARRY A. POTH, JR.
RICHARD M. MERRIMAN
REID & PRIEST
1701 "K" Street, N. W.
Washington, D. C. 20006

Attorneys for Respondent

PROOF OF SERVICE

Service of this Objection of Respondent to Motion for Leave to File Brief Amicus Curiae has been made upon the Federal Power Commission by mailing copies hereof airmail postage prepaid to Mr. Erwin N. Griswold, Solicitor General, Department of Justice, Washington, D. C. 20530 and upon the American Public Power Association by mailing copies hereof airmail postage prepaid to Mr. Northcutt Ely, 1200 Tower Building, Washington, D. C. 20005 this 16th day of December, 1970.

Original Signed By
Leon Jaworski

Attorney for Respondent